

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.11879 of 2020

and

Crl.M.P.No.5186 of 2020

1.D.Kesavamoorthy
2.M.Chandrasekar
3.N.Indumathi
4.K.Rajendran

... Petitioners

Vs.

The State rep.by
The Inspector of Police,
City Crime Branch,
Coimbatore City.
Crime No.10 of 2020

... Respondent

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C., to grant an anticipatory bail to the petitioners in the event of their arrest on their appearance before any Court in connection with the case in Crime No.10 of 2020 pending investigation on the file of the respondent police.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For intervenor : Mr.A.Saranraj

ORDER

(The case has been heard through video conference)

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 120B, 409, 420, 468 and 471 of IPC, in Crime No.10 of 2020, seek anticipatory bail.

2. The case of the prosecution as per the de-facto complainant viz., R.Sathishkumar, is that in the month of February 2016, the first petitioner and his brother / second petitioner herein, met the de-facto complainant, his wife and his friend Karthikeyan and persuaded them to become a partner in M/s.Uniq Creations. Based on the inducement the defacto complainant joined the partnership and invested Rs.25lakhs. The defacto complainant was residing at China and later, the petitioners taking advantage of the absence of the defacto complainant cheated him and misappropriated a sum of Rs.25 lakhs. Hence the Complaint.

3. The learned counsel for the petitioners would submit that the petitioners are innocent persons and they have been falsely implicated in this case. He would further submit that the first petitioner, de-facto complainant, his wife and one Karthikeyan became partners in the Textile business at their own Will and they entered into a partnership deed. As per the partnership deed, if any dispute arises between them, it has to be referred for arbitration as per clause-19 of the partnership deed. He would further submit that earlier an allegation was made against the first petitioner stating that he had drawn excess salary. Thereafter now, the present complaint has been filed stating that the petitioners had cheated a sum of Rs.25 lakhs.

4. The learned counsel for the petitioners further submitted that the first petitioner has filed a suit in O.S.No.1721 of 2019 on the file of the III Additional District Munsif Court, Coimbatore, seeking permanent injunction restraining the partners / defendants from running the business of the said Firm by operating the Bank account till the Firm is dissolved or his retirement is accepted. In the meantime, the de-facto complainant gave a false complaint on 25.10.2019. On enquiry, both the parties agreed to resolve their inter se disputes. Even after the settlement, the de-facto complainant filed a private complaint and as per the directions of the Court, FIR has been registered against the petitioners. Therefore, he prays to grant anticipatory bail to the petitioners.

5. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioners induced the de-facto complainant to join in the Textile business and later misappropriated a sum of Rs.25 lakhs taking advantage of the absence of the defacto complainant. Hence, he opposed to grant anticipatory bail to the petitioners.

6. The intervenor would submit that based on the inducement of the petitioners the defacto complainant joined in the partnership Firm in the year 2015 in the name and style of M/s.Uniq Creations, which is engaged in the textile business. Thereafter, the first petitioner along with the other accused had cheated him to the tune of Rs.25 lakhs.

7. At this juncture, the learned counsel for the petitioner would submit that a case of pure civil transaction has been projected as case of cheating. He would further submit that without prejudice to the defence the first petitioner is prepared to deposit original title deed of documents worth Rs.25lakhs to the credit of Cr.No.10 of 2020 to show his bonafides.

8. Heard, the learned counsels appearing on either side and perused the materials on record.

9. Considering the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

10. Accordingly, the petitioners are directed to be released on bail in the event of their arrest or on their appearance, within a period of fifteen days after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, before the learned Judicial Magistrate No.VII, Coimbatore, on condition that each petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the first petitioner shall deposit original title deed of documents to the market value of Rs.25lakhs to the credit of Cr.No.25 of 2020.

[b] the petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioners 1, 2 and 4 shall report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter every Monday at 10.30 a.m., until further orders. The third petitioner shall report before the respondent police daily for a period of one week and thereafter, as and when required for the interrogation.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

11. With the above directions, this Criminal Original Petition is ordered. Consequently, connected Miscellaneous Petition is also closed.

-sd/-

10/09/2020

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.VII, COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 III Additional District Munsif Court,
Coimbatore

4 THE INSPECTOR OF POLICE,
CITY CRIME BRANCH,
COIMBATORE CITY.

CC to M/S. N.MANOKARAN Advocate on payment of necessary charges
Sr.6208

CRL OP.11879/2020

सत्यमेव जयते Date :10/09/2020

RVR 22/09/2020

WEB COPY